

EMPLOYMENT SECURITY DEPARTMENT

STATE OF WASHINGTON

TRANSCRIPT OF PROCEEDINGS

of

UNEMPLOYMENT INSURANCE RULES

STAKEHOLDER MEETING

Date and Location

December 2, 2004 Employment Security Department
Tuesday, 9:00 a.m. 106 Maple Park,
 Olympia, Washington

BE IT REMEMBERED, that an Unemployment Insurance Rules stakeholder meeting was held at the location and time as set forth above. The Employment Security Department was represented by JUANITA MYERS, Rules Coordinator, as the hearing officer. SUSAN HARRIS was also present.

Reported by:
Marcie L. Johnson, CCR
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EXCEL COURT REPORTING
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PROCEEDINGS

Introduction

MS. MYERS: Let's start off. First, I would like to welcome you and thank you again for attending another of these sequence of meetings on the rules to implement Second Engrossed Senate Bill 6097. We completed the first round, the majority of the rule-making, during this last year, but there are a few sections of the law that go into effect in January of the upcoming year. And we're going to look at doing possibly emergency rules. And we are also pursuing some legislative remedies on a couple of these, but in the event that the legislation doesn't pass or is changed substantially, we will have rules in place.

Of course my name is Juanita Myers. I'm the rules coordinator for the Unemployment Insurance division. With me is Susan Harris who also works for the UI policy unit in Unemployment Insurance. Keith Black works in the experience rating and benefit charging unit. And we will have additional representatives from tax joining us after the break, because I am not an expert in tax. I will be the first to tell you that. And they need to be here to answer technical questions.

Marcie is the court reporter and will be reporting the

1 information you say today. It's not a formal meeting, but
2 we will have it transcribed just so we have a better record
3 of the input that we receive today on the various
4 rule-making topics.

5 If I could ask you to introduce yourself for the
6 record, Dan.

7 MR. SEXTON: Dan Sexton, Washington State Association
8 of Plumpers, Pipe Fitters, and Sprinkler Fitters.

9 MS. BRACKENBURY: Amy Brackenburg, BIAW.

10 MS. GEE: Jan Gee with the Washington Retail
11 Association today.

12 MR. FINCH: Cliff Finch with the Washington Food
13 Industry.

14 MS. MYERS: Thank you.

15 I think you have all been here before, but just in
16 case, the rest rooms are out this door here and just down
17 the hallway through there. And during the break there's a
18 snack machine, soft drink machine, and so on.

19 MR. SEXTON: Coffee?

20 MR. FINCH: Aren't you required to say the closest
21 Starbucks is --

22 MS. GEE: No. They're required to bring Starbucks.

23 MS. MYERS: This meeting is informal. I will just go
24 through the various topics and then discuss the subject we
25 are looking at and the subject we are taking rules on.

1 I would ask that before you speak that you would just
2 repeat your name for the record so that Marcie can jot it
3 down.

4 With that said and unless there are any questions, I
5 will go ahead and get started. Okay.

6 Part-time workers, Section 12 of the legislation --
7 it's on page 13 -- has been codified as RCW 50.20.119. Let
8 me go back a little bit.

9 Up until the end of this year individuals to be
10 eligible for unemployment benefits must be able, available
11 for, and actively seeking full-time work. That is true even
12 if the individual has a history of working part-time. So
13 for example, if somebody works 25 hours a week and always
14 has, to be eligible for unemployment they have to agree that
15 they will be available for full-time work and will look for
16 full-time work.

17 This statute carves out an exception for a small group
18 of claimants, and that is those individuals who have worked
19 17 or fewer hours per week. They have to have worked at
20 least 40 weeks during the year, and that's because 40 times
21 17 equals the 680 hours necessary to establish a valid
22 claim, but they need not have worked or earned wages in
23 employment in more than 17 hours per week in any weeks in
24 their base year. So if the individual has worked 18 hours
25 one week or 20 hours one week, they are not eligible under

1 this section.

2 What this section does is makes those individuals
3 eligible for unemployment benefits if they are available
4 for, seeking, and apply for or accept only work of 17 or
5 fewer hours per week. And under those circumstances we
6 can't deny them benefits under RCW 50.20.010(1)(c); this is
7 the statute that requires availability and an active work
8 search; 50.20.080, which is the work refusal statute; and
9 50.22.020(1), which is the statute that lays out the job
10 search requirements for individuals receiving unemployment
11 benefits.

12 You would think this is a simple law to implement, but
13 it's not.

14 Dan.

15 MR. SEXTON: That looks like a good enough place to get
16 started there. In your simple reading of this simple
17 language, it seemed like you kind of hit a bump at the "or"
18 between 50.20.080 or 50.22.020. It sounded to me like you
19 started to say "or" but then you said "and." And you know,
20 I'm still kind of unclear of the meaning here or the intent.
21 I think that "or" always means "or" and "and" always means
22 "and."

23 So you know I'm not -- it seems to me that maybe they
24 are saying 50.20.010(1)(c) "and" 50.20.080 "or" 50.22.020.
25 And then relating to (1) availability for work and active

1 search for work or (2) failure to apply for or (3) refusal
2 to accept suitable work.

3 MS. MYERS: Okay.

4 MR. SEXTON: That's how I read it.

5 MS. MYERS: If I said "and," I misspoke. Those are
6 "or's." What that means is an individual cannot be denied
7 benefits under those three. They don't have to be denied
8 under both. So 50.20.010 and 50.22.020 both relate to
9 availability and active search for work. So if an
10 individual is able and available and actively searching and
11 accepts 17 or fewer hours per week, they cannot be denied
12 for failing to conduct an active search for work or being
13 available for work at that point. And 50.20.080 requires
14 individuals to apply for or -- it denies benefits to
15 individuals who fail to apply for or refuse an offer of
16 suitable work, and so they couldn't be denied that. Again,
17 if an individual is seeking, applying for, available for, or
18 accepts part-time work of 17 or fewer hours per week, they
19 can't be denied for refusing an offer of suitable work under
20 50.20.080. Okay?

21 Jan, you're looking at me with a puzzled expression.

22 MS. GEE: If they accept a job, what's the issue?
23 They're working. That's why I was trying to understand what
24 you were saying.

25 MS. MYERS: Well, I will get to that.

1 As I was saying, you would think this was a simple law
2 to implement, but it's not. We have actually been working
3 on this since spring and keep coming up with more and more
4 of different types of problems.

5 First of all, I'll let you know the types of WACs we
6 are adopting. We have in the statute now individuals that
7 we refer to as partially unemployed. Those are individuals
8 who are hired to work full-time but for whatever reason --
9 seasonal, budget cuts, economy, whatever -- their hours have
10 been temporarily reduced by their regular employer, but
11 there's an expectation that they will return to full-time
12 work. Those individuals are potentially eligible for
13 unemployment benefits.

14 Say you worked full-time for an employer at 40 hours a
15 week and the employer to reduce costs is cutting everybody's
16 hours for the next month to 20 hours a week just to save
17 money. Those individuals are eligible for unemployment
18 benefits. Assuming their income with those 20 hours isn't
19 higher than their weekly benefit amount would be, we would
20 still apply their income.

21 Cliff.

22 MR. FINCH: I was trying to remember that program. At
23 that particular point when they get cut to 20 hours they can
24 actually leave their job and be entitled to unemployment
25 benefits. But to get into the partial pay program, doesn't

1 that require the agreement of the employer?

2 MS. MYERS: No. You're thinking of the shared work
3 program.

4 MR. FINCH: Right.

5 MS. MYERS: The shared work program pays individuals a
6 percentage of their benefits based on the percentage of
7 their reduction in hours. But the actual definition in the
8 statute 50.04.310 defines an unemployed individual as
9 somebody who is not working or somebody who is working less
10 than full-time and their remuneration or pay does not
11 exceed their weekly benefit amount.

12 So technically you could have some people whose hours
13 are only cut to 35 hours a week and if their wages are low
14 enough, may qualify for a small weekly benefit amount. It
15 doesn't happen very often that somebody still working 30 or
16 more hours a week gets much unemployment, but it does occur.
17 So those partially unemployed people are considered attached
18 to their employer, and they don't have to look for work.
19 They just have to be available for all hours of work offered
20 by their regular employer.

21 The second group of workers is what we've traditionally
22 referred to as part-time workers, and those are individuals
23 who have always worked less than full-time. They have a
24 history of working less than full-time hours. As I said,
25 those individuals must be seeking and available for

1 full-time work to qualify for unemployment benefits.

2 And then there's, of course, the small group of
3 part-time workers who are eligible under this new statute,
4 and those are the people who have worked no more than 17
5 hours per week turning their base year. Those people may
6 continue to seek work of 17 or fewer hours per week without
7 having to -- they don't have to look for full-time work. So
8 there's a distinction.

9 And to avoid confusion we will be adopting a rule
10 clarifying those three categories of workers and clarifying
11 what their availability and job search requirements are just
12 in one spot in the rules so it's clear to the regulated
13 community who we mean by partially unemployed, because those
14 are basically terms of art within the Department. And of
15 course there's part-time workers and then part-time eligible
16 workers.

17 Any questions on that section?

18 Now let's talk about job search requirements and
19 availability requirements for the part-time eligible
20 workers.

21 The way the statute is worded an individual who meets
22 this criteria --

23 Excuse me, Dan.

24 MR. SEXTON: Where are you at now?

25 MS. MYERS: Clarify job search and availability

1 requirements. It's still in Section 12, page 13.

2 MR. SEXTON: Okay. Moving right along, sorry.

3 MS. MYERS: That's all right.

4 The statute says that somebody who meets the criteria
5 to be under this statute -- somebody who hasn't worked more
6 than 17 hours per week in any week in their base period and
7 otherwise is eligible for benefits -- cannot be denied under
8 50.20.010(1)(c), which again is the able and available
9 statute; or 50.20.080, the requirement to apply for or not
10 refuse acceptable, suitable work; or 50.22.020, which
11 requires job search for those receiving extended benefits,
12 as long as those individuals are available for, seek, apply
13 for, or accept work of 17 or fewer hours per week.

14 And that "accept" language there throws a little wrench
15 into the works for us. For example, say I was an individual
16 who was unemployed. I had been laid off, I was required to
17 look for full-time work, and I got a part-time job. And I
18 said, "Okay, I'm going to take this part-time job, but I'm
19 not going to look for work anymore, and I'm still going to
20 apply for benefits every week." We would deny that person
21 benefits under 50.22.010(1)(c) by stating, "You are not able
22 to or available for or actively seeking work. Benefits
23 denied."

24 Because this statute refers to somebody who accepts
25 work of 17 or fewer hours per week, we cannot deny them

1 under 010(1)(c). If that person accepted a job of five
2 hours a week or fewer, we could no longer deny their
3 benefits under 010(1)(c) because they have accepted a job of
4 17 or fewer hours. So if that individual said, "I'm only
5 going to work five hours a week or ten hours a week, but I'm
6 going to continue to apply for unemployment benefits every
7 week," we have no grounds in statute to deny them benefits.

8 MR. SEXTON: They could still be eligible.

9 MS. MYERS: They could be eligible. We would do the
10 income disregard, but we cannot require them to look for
11 work, because the statute says if they have accepted work of
12 17 or fewer hours per week we cannot deny them under
13 50.20.010(1)(c), and there's no other statute under which we
14 could deny them.

15 Now, before we worry about how big of a problem this is
16 going to be from a business perspective, we don't know even
17 how many people are going to qualify for benefits under this
18 statute. Employers don't report hours to the Department on
19 a weekly basis. They report quarterly. So we're just
20 making a guesstimate of the number of people who may be
21 eligible. Hours in a quarter would be -- somebody would
22 need to have 221 or fewer hours per quarter to potentially
23 qualify under this section of the law. Now, that's because
24 13 weeks times 17 hours is --

25 MR. SEXTON: Less than 222.

1 MS. MYERS: Yes. Fewer than 222 hours per week, yes.

2 MR. SEXTON: Per quarter.

3 MS. MYERS: Per quarter of their base year.

4 We did an entire run of the wage file and found that
5 there's about 7,000 people who meet this criteria. Now, of
6 course they are not all going to be laid off all at one
7 time.

8 MR. SEXTON: We hope.

9 MS. MYERS: We hope. But we have no way of knowing,
10 though, if during that quarter it's possible they worked 10
11 hours one week, 25 the next week, so we don't know what the
12 population is. We are estimating that this is only going to
13 apply to a couple hundred people, but we won't know until we
14 have, say, a year's experience to say who might qualify.

15 What our process is going to be is when an individual
16 applies for unemployment benefits, if our computer system
17 reads that they have 221 or fewer hours per quarter of their
18 base year, it will alert the intake worker to ask them
19 additional questions. And of course those questions would
20 be, "During your base year or from this year to this year in
21 any week did you work more than 17 hours a week?" If they
22 say "Yes, I did," we just go on and take it as a regular
23 claim.

24 MR. SEXTON: And that kicks them right out.

25 MS. MYERS: Pardon?

1 MR. SEXTON: And that kicks them right out of -- you
2 know, my employer we had an emergency and I had to work over
3 one hour one day. That kicks me right out of the system
4 right there.

5 MS. MYERS: Right. If you had to work 18 hours in one
6 week.

7 MR. SEXTON: 18 hours in one week.

8 MS. MYERS: That is correct.

9 MR. SEXTON: And I have worked 17 hours all my whole
10 life, and this one day we had an emergency. I had to stay
11 for an hour, and that kicks it out.

12 MS. MYERS: Yes. The statute says did not earn wages
13 in employment in more than 17 hours per week in any weeks in
14 their base year.

15 MR. SEXTON: I was quite happy when you were just
16 looking at the 222 hours per quarter. You know, that seems
17 like a very fine way to look at it quickly and easily, and
18 that should be sufficient.

19 MS. MYERS: Well, that's only an initial screening
20 mechanism for us because of the way the employers report
21 wages.

22 To go on, if the individual says, "No, I didn't work
23 more than 17 hours per week in any week in my base period,"
24 then we would let them know that you can continue to seek
25 work under 17 hours and qualify for benefits. But we would

1 also send a letter to that individual's employer saying that
2 this individual has applied for unemployment benefits. They
3 indicated that they did not work more than 17 hours a week
4 in any week during whatever periods it is that they worked
5 for this individual employer. And if it is true, you don't
6 need to respond to us; but if it is not true, please give us
7 the date or week or weeks during which they worked more than
8 17 hours. So the employer will get an opportunity to verify
9 that information.

10 But we are not going to hold up the individual's claim,
11 just as we don't for somebody who says they are on standby.
12 We will put them into union status but verify with the
13 union. So that's a process that will be followed.

14 There are a lot of questions that come under --

15 MR. FINCH: Before we jump into that I want to go back
16 to the "accepts."

17 MS. MYERS: Okay.

18 MR. FINCH: And I want to suggest -- without having sat
19 down and done the analysis that you have in detail, and if I
20 do that analysis I may come out the same way as you -- but
21 sitting here doing an analysis, I would suggest that there's
22 a break in logic in interpreting "accepts" that way. What
23 that break in logic is I would suggest possibly -- and it
24 may be black and white the other way -- but you're treating
25 the word "accepts" different than the other standards there.

1 And the example I would use to you -- my reading of the word
2 "accepts," particularly because the word "only" is in there,
3 is it's referring to the decision process as to what they're
4 seeking, applying for, or willing to accept.

5 I would suggest to you that the moment the person does
6 accept the job we're no longer into the issue of whether
7 they are accepting or not, we're into the fact of whether
8 they have a job and the other statutes kick in.

9 And the reason I believe you have a problem, I will
10 just make it clearer, is that under the analysis you are
11 using if in fact the "accepts" trumps everything and as long
12 as the job that I have accepted is under 17 hours and I
13 continue to get benefits, that would also hold true then for
14 the word "seeks" and "applies." And under that logic what
15 I'm suggesting is as long as I applied that week I trump. I
16 can sit there and turn down any job in the world, but as
17 long as I applied, under the logic we are using for the verb
18 "accepts," the word "applies" then trumps because that also
19 is an "or."

20 So I guess what I'm suggesting is that the use of the
21 language there suggests that those verbs are being used in a
22 decision-making context, and I think decision-making is the
23 wrong way to describe it and have no substantive effect once
24 in fact a job has been accepted and at that point the normal
25 statutes kick back in. I would agree that all of those

1 verbs apply to the availability issue of, Is the person
2 willing? is the person seeking? willing to accept? and all
3 of those steps. But you can't have one trump and not have
4 the others.

5 And I think when you read the sentence in its entirety
6 that in fact the only plain meaning that becomes logical and
7 that the courts would hopefully lean towards is sort of the
8 logical explanation I have just laid out. Having said that,
9 if I'm wrong we've got an even worse problem.

10 MS. GEE: Tom McBride agrees. And Chris Taft is
11 writing the legal analysis. So you were right on to where
12 we are all in agreement on this issue. You hit it right on
13 the nose. And we will be submitting that in writing in
14 terms of our legal analysis on that from AWB. I just kind
15 of need to know what the timeline is on that.

16 MS. MYERS: We will talk about that at the end of this
17 meeting.

18 MS. MYERS: That's just one issue.

19 MS. GEE: Yes.

20 MR. FINCH: Yes.

21 MR. SEXTON: I thought I was doing the argument for you
22 earlier.

23 MR. FINCH: You are getting the juices going there.

24 MS. MYERS: The case law that has built up over the
25 years was built up under the premise that people had to be

1 seeking full-time work. And it says that an individual has
2 to be available for all hours or shifts customary to their
3 occupation. There's no reference to that in this statute,
4 and we're not certain whether the case law would apply.
5 Because many times people who work 17 or fewer hours per
6 week do so because they can't work all shifts or hours
7 customary to their occupation. Maybe they do evening work
8 or weekend work or work hours when their children aren't in
9 school or for whatever reason.

10 So it's not clear to us, and we haven't resolved
11 this -- but I guess we will pretty quickly -- whether those
12 individuals if they come in and apply for benefits and say,
13 "I have always worked Saturdays and Sundays. That's all the
14 days I have worked. I have worked 16 hours a week forever,
15 and I would like to be able to continue working 16 hours a
16 week."

17 Say that person works in food service. Hours customary
18 to that occupation are generally all shifts or at least
19 till, you know, swing shift at least: days, afternoons, you
20 know, evenings, seven days a week. If a full-time person
21 came or somebody required to seek full-time work came in and
22 said, "I'm only willing to work Tuesday through Saturday; I
23 can't work Sunday or Monday," we would deny their benefits
24 because they are not available for all shifts.

25 But I don't know because this statute is carving out an

1 exception for people who work 17 or fewer hours per week
2 whether we should be requiring them to be available for all
3 shifts customary to their occupation, which in one sense
4 kind of defeats the purpose of allowing them to seek
5 part-time work. So if an individual has only ever worked
6 weekends or evenings, should we permit them, those who
7 qualify under is this statute, to continue looking for jobs
8 on evenings or weekends or whatever is applicable or deny
9 their benefits because they are not available for all shifts
10 customary to their occupation?

11 Dan.

12 MR. SEXTON: Clearly I agree with all the good stuff
13 you just said and disagree with everything else. Let's take
14 your example and flip it around.

15 A person who works traditionally Monday through
16 Friday -- I have always worked 40 hours a week. Well, I'm
17 sick on Saturday and Sunday, you know. Is that going to
18 reduce my benefits?

19 MS. MYERS: If those are hours customary to your
20 occupation, yes, they would. Now, we don't go by your work
21 history. We go by the hours customary to the occupation.

22 MR. SEXTON: Customary to my occupation those hours --
23 Monday through Friday is the customary hours.

24 MS. MYERS: Then, no. If you are sick on Saturday and
25 Sunday, no, they would not reduce your benefits.

1 MR. SEXTON: Okay. So I have worked in an occupation
2 where my customary employment has always been Saturday and
3 Sunday.

4 MS. MYERS: That's your customary employment, but
5 that's not --

6 MR. SEXTON: You take this and then you put it into a
7 specific situation. You say now what if this person worked
8 in, you know, retail or food processing? Well, let's put it
9 in a different situation. What if that person worked in an
10 industry where Saturday and Sunday was the work? You know,
11 we're saying what if here.

12 MS. MYERS: Okay.

13 MR. SEXTON: You go to hypotheticals where, what if
14 this person's normal hours were, you know, Monday through
15 Sunday, but this person chose to work Saturday and Sunday.
16 Well, you know, what if this person didn't choose to work
17 Saturday and Sunday, those were the hours, that was the job,
18 that was the occupation?

19 MS. MYERS: Well, then we don't have an issue here,
20 because if those were hours customary to their occupation,
21 that's what they would be required to -- that's pretty few
22 and far between where you have an occupation whose customary
23 hours of work are 16 hours per weeks or less on specific
24 days. It could happen.

25 MR. SEXTON: On a case-by-case basis.

1 MS. MYERS: Of course it's a case-by-case basis. But
2 the question gets back to in those cases where the customary
3 hours of work are broader than what that person has
4 traditionally worked. Do they still hold them to the same
5 standard?

6 Getting back to that waitperson in a restaurant and
7 that individual has only worked weekends, 16 hours a week.
8 They supplement the family's income while a spouse is at
9 home able to provide child care so they work Saturday and
10 Sunday. Then they get laid off. They come in and apply for
11 benefits, and they say, "I can only look for work on
12 Saturday and Sunday." But the case law that is built up
13 under the requirement to seek full-time work says you have
14 to be available for all shifts. So if we apply that logic
15 to those individuals, they would be denied benefits on
16 availability because they are not available to work all
17 shifts. Or do we say because of the wording in this statute
18 which applies to the 17 or fewer hours, I don't know, do we
19 allow that person to limit their availability to the hours
20 that they have customarily worked?

21 MR. SEXTON: The record will show that Dan is nodding
22 his head.

23 MS. MYERS: And I would like to hear also from the
24 business community on this -- what their thoughts are.

25 MS. GEE: Well, I certainly know what the intent of the

1 language is that it was thrown in the bill the last 48 hours
2 of this and had direct negotiations with the governor's
3 office. And since it most impacted the restaurant
4 association and retail association we were very much
5 involved in this and not supportive of the inclusion of this
6 section, but very much involved in the discussion. So I
7 know what the intent was. It was actually the governor who
8 negotiated this language into the bill.

9 But I also know what the intent was of the first
10 section you already talked about and the structure of that
11 sentence and how you are interpreting it. So I will say --
12 and I know in the past when we have talked about the UI
13 stuff, the legislative intent, unless there's a floor record
14 or something of it then you really don't look to that. But
15 there's not a floor record of much of this because of the
16 way it happened.

17 So the legislative intent of the first section you
18 talked about is not representative of your interpretation of
19 the sentence structure. It is -- the legislative intent was
20 representative of what we were discussing, what Cliff went
21 through in terms of the sentence structure.

22 The legislative intent on this second piece was that
23 the person would only be required to accept the part-time
24 work that was consistent with the pattern of their work in
25 those hours that made them eligible for unemployment

1 insurance. So if they only worked weekends because of child
2 care issues, they would only be required to work hours in
3 which those child care issues did not exist, because clearly
4 most of these workers that are under 17 hours are in
5 restaurant or retail. And both of those industries are 18-
6 to 20-hours-a-day industries. So there's no example like
7 what you're talking about. I mean, it would be so miniscule
8 in another industry it wouldn't really count. So mostly
9 they are in the restaurant and retail industry.

10 And what we were discussing here was the sensitivity to
11 the issue of maybe somebody that's going to school and just
12 working at night or somebody that has child care issues and
13 they are choosing not to work full-time to have at-home
14 child care.

15 But again, if Employment Security is going into that
16 first section and broadening to that level that it would
17 open up this statute in a way that was never intended, then
18 we are not -- this is going to be a problem for us to
19 liberally construe this section, even though I know what the
20 intent was on both of these sections. I mean, I was there
21 in the room with the governor, and, you know, we wanted
22 parents to be home.

23 MR. FINCH: I was there too, and I agree with
24 everything Jan said.

25 One other nuance -- we have got to keep your job

1 complicated here. The one other nuance -- and Jan is
2 correct with regard to what the intent was on the pattern --
3 it was also, though, not to go to the other extreme where
4 somebody can basically walk in and say, "I work 17 hours a
5 week from 3:00 in the afternoon until 7:00 p.m. each day of
6 the week, and here's a job that starts at 2:30 and, you
7 know, so I don't accept that job." And so it was not meant
8 to become an out for anyone to stay in unemployment benefits
9 for the full 30 weeks because the --

10 MS. MYERS: 26.

11 MR. FINCH: Pardon me. 26 weeks.

12 MR. SEXTON: The record shows I support that.

13 MR. FINCH: Strike that from the record. Strike that
14 from the record.

15 MR. SEXTON: Thanks, Cliff. High five, Cliff.

16 MR. FINCH: 26 weeks. It was not intended to be an
17 easily abusible thing where somebody could go on 26, go work
18 in another part-time job, and the moment that's over with,
19 "Oh, nope. My job was from 3:00 to 6:00, not 2:30 to 5:30."

20 We are not making things any easier for you, but
21 somewhere we have got strike the balance there with the
22 pattern issue.

23 MS. MYERS: "Consistent with" might be a good term as
24 opposed to exactly the same as, allowing some flexibility.
25 The reasonably prudent person test, getting back to that.

1 Dan.

2 MR. SEXTON: You know, I just have to always say
3 something about something, I guess.

4 Clearly I appreciate the fluctuation of Cliff's weeks
5 there, and I appreciate the sensitivity that Jan is
6 mentioning in the second part, not the lack in the first
7 part. But, you know, once again, intent is not what any
8 lobbyist was thinking at any point in time. It was what the
9 legislators were thinking. It's the legislative intent.
10 And none of us around this table have legislative intent.
11 Only the legislators do.

12 And I want to thank Cliff for the picture there, too.
13 So I'm truly losing my train of thought after that.

14 MS. GEE: It was the governor, and he alone was doing
15 it.

16 MS. MYERS: You had something to say.

17 MR. FINCH: The only other comment I was going to make.

18 MR. SEXTON: Hand me the camera.

19 MR. FINCH: The only other comment that I was going to
20 make --

21 MS. MYERS: I think I'm losing control.

22 MR. FINCH: The only other point I was going to make
23 is, you know, Dan's correct. It isn't what we as lobbyist
24 think in retrospect, what we wrote.

25 But having said that and you alluded to it earlier, the

1 part that to the degree that you're looking at the nuances
2 of the language -- you alluded to one thing that even at the
3 time this was being drafted bothered me with regard to
4 unintended consequences. And that is to what degree does it
5 trump the statute with regard to customary? And I think to
6 the degree that one takes a very literal meaning, not
7 necessarily the plain meaning, but the literal
8 interpretation it trumps a number of realities over the
9 years that the courts and others have developed with regard
10 to the definition of "customary." The courts are very
11 clear. Any time that there's a body of case law but the
12 legislature finally comes in and defines things, by
13 definition that's it. And to the degree they leave things
14 out, the courts have been quick to point out that that is as
15 deliberate as what's been put in.

16 So at least with regard to the 17 hours, the nuances of
17 getting too literal in any direction are dangerous for both
18 sides.

19 MR. SEXTON: So to paraphrase your position for you,
20 Cliff, we like the words on paper when we like the words on
21 paper. We don't like the words on paper when we don't like
22 the words on paper.

23 MR. FINCH: We're getting nasty. I like the words on
24 paper. I was just implying --

25 MS. GEE: State your name so Marcie knows you.

1 MR. FINCH: In fact, because this is a public record I
2 better just be quiet at this point.

3 MS. MYERS: And it would be better for Marcie if we
4 didn't talk over each other.

5 MR. FINCH: Can we vote and strike the last 15 minutes?

6 MS. MYERS: All right. The other question we have that
7 relates to availability for work is another statute that
8 says that an individual can be denied benefits for any days
9 of a week during which they are not available for work. So
10 if they are unavailable for one day of the week, they get a
11 one-seventh deduction. If they are unavailable for two days
12 of the week, they get a two-sevenths deduction. And if they
13 are unavailable for three days of the week, they get no
14 benefits for that week.

15 And how we would relate this to people, assuming we
16 would allow them to limit their job search to again, say,
17 Saturday and Sunday. And if they're sick Monday through
18 Friday but they are able again to look for work Saturday and
19 Sunday, do we apply that statute or do we still mark them
20 out as unavailable for work?

21 MR. SEXTON: Juanita, just briefly, what section is
22 that?

23 MS. MYERS: I didn't bring my law book with me. It's
24 not in this statute. We will get it for you after the
25 break.

1 MR. SEXTON: But that's a general -- that you think
2 applies to these people?

3 MS. MYERS: Well, I'm asking because the statute simply
4 says that an individual who's eligible for unemployment --
5 or individual who is not available for work for one day
6 during a week. Now, we have applied that in the past to a
7 day that is customary to that individual's occupation. So
8 if the individual's occupation, as you referred to earlier,
9 was Monday through Friday -- they're a schoolteacher or
10 something, and they work Monday through Friday, and they are
11 sick on Saturday or Sunday. We don't do a deduction. But
12 in this case if an individual is available and actively
13 seeking a job of 16 -- excuse me -- for 17 or fewer hours
14 per week and they were sick for two days of that week, they
15 are still available for work for 16 hours. So do we apply
16 that statute?

17 MR. SEXTON: Well, doesn't this Section 12 right here,
18 this new section, pretty much lay out everything that's
19 applied and how it's applied?

20 MS. MYERS: Oh, if that were only true.

21 MR. FINCH: And again, this is one where I would have
22 to go back and read the statutes again. You have raised an
23 appropriate question that I need to go back and look.

24 I guess -- and this is just off the top of my head.
25 I'm quickly drawn to the statutory provision that not only

1 says you must be available to accept the job, but you must
2 be actively searching for work. To me you can hang on
3 either one of two legal interpretations. The fact is if on
4 a particular day I fly off to another state, I'm not
5 available to accept a job that -- you know the issue is the
6 availability to accept the job. The job may not actually
7 kick in until Monday and Tuesday, but if you are not
8 available and seeking -- I mean, if you are incapable of
9 being able to accept the job or seek the job on that day, my
10 feeling would be, you know --

11 MS. MYERS: Take the deduction.

12 MR. FINCH: You are right. I would have to go back and
13 look at the case law there. But you are right. We have got
14 a whole series of issues.

15 This statute does for the first time clarify the
16 particular issue of part-time workers. And interestingly
17 enough the word "customary" isn't there in a couple of
18 places. So you are reading "customary" in where it isn't in
19 the statute.

20 And in fact if one wants to take a literal meaning of
21 this particular section that's drafted, the word "customary"
22 isn't there. It just says "work."

23 MS. MYERS: But if you look at Section 13, the new
24 section (3), "For part-time workers as defined in Section 12
25 of this act, suitable work includes suitable work under

1 subsection (1) of this section that is for 17 or fewer hours
2 per week." And if you look up at subsection (1), "Suitable
3 work for an individual is employment in an occupation in
4 keeping with the individual's prior work experience,
5 education, or training..."

6 MR. FINCH: Yeah. And actually, I have read that
7 section, and I can still make a legal argument with regard
8 to where the word "suitable" is and is not thrown in.

9 But be that as it may, I do have to go back and look at
10 the case law. But at least with regard to the statute, if
11 they are not available, seeking, or whatever, if they are
12 incapable of doing it, to me the normal -- to me they are
13 not available.

14 MS. MYERS: Okay.

15 MS. GEE: I mean, this new provision is to change what
16 type of work the person has to accept but not all the work
17 search and all those other types of issues. It's only
18 allowed because the part-time workers in the past have also
19 had to accept full-time work. This section is written to
20 allow those 17 hours and below to accept something other
21 than full-time work, and if it's not available to them that
22 they can continue to receive unemployment insurance.

23 So I, you know -- I'm not an attorney, and so I know
24 the sentence structures and stuff are important, but I think
25 that the simple reading of this section is not intended to

1 change any work search requirements or anything but only to
2 allow those people to accept something other than full-time
3 work or, in other words in the negative, to turn down
4 full-time work and still receive benefits.

5 MR. FINCH: And can someone provide us with the case
6 law on this issue?

7 MS. MYERS: About the customary hours?

8 MR. FINCH: Yeah.

9 MS. MYERS: Okay.

10 MR. FINCH: And any work search implications and
11 availability implications.

12 MS. MYERS: It won't be today but --

13 MR. FINCH: No.

14 MS. GEE: I was just stating that we would like to have
15 a copy of any case law that you're using in your
16 interpretation and analysis of it so that we have that to
17 our benefit too. Thank you.

18 MR. SEXTON: And I want whatever they want.

19 MS. GEE: And more.

20 MR. SEXTON: And one more.

21 MS. MYERS: Okay. That's what we had for -- the topics
22 we had to part-time workers.

23 Oh, I did have a note that says "define employer
24 attachment." Basically, the law says under the job search
25 monitoring program individuals who are employer attached

1 don't have to participate, and we're saying we are going to
2 add these people who work 17 or fewer hours -- once they're
3 working they are considered employer attached. So that's
4 all that that particular thing references.

5 So unless there are more questions, we are going to
6 take a 15-minute break. I'm going to go round up somebody
7 from tax to come over here and be available to answer
8 additional questions because as I said, I'm not an expert.

9 What are you doing, Cliff?

10 MS. GEE: He has a great newsletter. You will be a
11 star in the newsletter.

12 Why don't you wait until we see how they write the
13 rules.

14 MS. MYERS: Then it will have a dart on it.

15 MR. SEXTON: Bring back an ethics book too, would ya.
16 Is that a bribe?

17 MS. MYERS: Let's take a 15-minute break and reconvene
18 at 10:20.

19 (Recess taken.)

20 MS. MYERS: For those of you who have not met her,
21 joining me at the front here is Diane Bren -- she's
22 relatively new -- our deputy assistant commissioner of the
23 tax branch of the Unemployment Insurance division. And
24 she's going to be able to answer a lot of the tax questions
25 that I can't answer.

1 MS. BREN: Hopefully.

2 MS. MYERS: Hopefully. Just don't come up with
3 anything esoteric.

4 MR. FINCH: Well, you told her what a civil discussion
5 we had earlier.

6 MS. MYERS: Yes. I told her it was getting out of
7 control.

8 Let's start off with employer penalties.

9 MS. GEE: Which section?

10 MS. MYERS: Section 22 on page 32.

11 MS. GEE: Thank you.

12 MR. SEXTON: Was that 22 or 32?

13 MS. MYERS: Section 22 on page 32.

14 MR. SEXTON: You only have to tell me about three
15 times.

16 MS. MYERS: Okay. The statute was amended to, in most
17 cases, increase the penalty for employers who file late
18 reports, and it added new penalties for employers who filed
19 incomplete reports or reports filed in the wrong format.
20 However, the statute does not set a minimum penalty. It
21 only sets a maximum number. And that maximum is \$250 or 10
22 percent of the quarterly contribution for each offense,
23 whichever is less. So we have many cases where an
24 employer's penalty is 19 cents or a dollar. And it doesn't
25 make sense to us to try to send out a collection letter to

1 try to do that.

2 Now, there's no authority in the statute for us to
3 waive those penalties, so what we're saying is we are not
4 going to waive them, but they are not going to bill somebody
5 until the amount reaches \$5. So it will stay on their
6 account. And once it hits \$5, because again they were late
7 periodically, we would start billing once the amount reached
8 \$5.

9 Dan.

10 MR. SEXTON: So I'm reading Section 22(1)(a) and the
11 new language there. Does this say that all penalties shall
12 be \$250 or 10 percent of the quarterly contribution for each
13 offense?

14 MS. MYERS: Whichever is less.

15 MR. SEXTON: So I can't stick them all for \$250
16 regardless, period?

17 MS. MYERS: No.

18 MS. GEE: You try.

19 MR. SEXTON: Well, it may be a very liberal reading of
20 this.

21 MS. MYERS: No. There are employers who owe very small
22 amounts of taxes, and 10 percent of that is a very small
23 dollar amount, and it's just not cost-effective for us.

24 MR. SEXTON: The last time I'm going to try to stake
25 you.

1 MS. GEE: What is the cost to Employment Security to
2 prepare and mail a bill and process it?

3 MS. BREN: More than \$5, obviously. We have not done a
4 cost analysis of it. Other agencies have that have looked
5 at closer to \$25 probably.

6 MS. GEE: Then I would suggest that so you don't have
7 an expenditure -- I mean, it doesn't make sense to spend
8 more money than you can recover. Look at what that
9 threshold is and put that threshold on that you would carry
10 over onto the employer's account.

11 MS. MYERS: That's one option. And this will be
12 discussed more at the UI advisory committee meeting, but the
13 Department is requesting legislation to establish a minimum
14 penalty in law of \$75.

15 MS. BREN: Of \$75.

16 MS. MYERS: So it a penalty of no less than \$75 no more
17 than \$250.

18 MS. BREN: Because currently the way it is now if you
19 have no payroll but you file an incomplete or, you know, an
20 incorrect format report, you would have the minimum \$75 or
21 \$150 penalty. Where as if you have payroll, you can end up
22 with the small penalty of the 10-percent-a-year tax. We
23 didn't think that was really equitable the way it was
24 working the it should be consistent that everybody have the
25 same minimum penalty. So that's what we're requesting is

1 that there would be the same minimum penalty.

2 MS. GEE: So you are saying the current minimum --

3 MS. BREN: Is 10 percent of your tax or \$250. But
4 right now the WAC says also that you have no payroll but you
5 are still filing incorrectly -- there's two schedules.

6 MR. SEXTON: That's the schedule on --

7 MS. BREN: That's \$75, \$150, and \$250.

8 MS. MYERS: Right. So basically somebody who owes no
9 payroll but they file an incomplete report is going to be
10 penalized \$75. Somebody who owes us \$20 in quarterly tax
11 and files late is going to get a \$2 penalty. And that's
12 what we felt was not equitable. But this will be discussed
13 further.

14 MR. FINCH: Why do you need to request legislation?
15 Because since it talks about an incomplete report -- you are
16 losing me here.

17 MS. MYERS: Go ahead.

18 MS. BREN: Because right now the incomplete tax report
19 -- that's in the WAC rules -- it's either the 10 percent or
20 the \$250, whichever is less. These schedules are only if
21 you have no quarterly tax due.

22 MR. FINCH: Okay.

23 MS. BREN: This is going to be more like the fourth
24 quarter for a lot of people whose excess wages are higher.
25 But this would make it be more equitable. You're going to

1 have somebody that this quarter may have \$75 due, next
2 quarter they may get the 10 percent and have a \$5 or \$10
3 penalty. To try to even that out and make it so everybody
4 is the same we thought there should be a minimum penalty as
5 well. Plus the administration costs like you said are
6 pretty well significant to where --

7 MR. FINCH: And just so I understand where the \$5
8 threshold works into this, since all the penalties we are
9 talking about are \$75 or above, we are basically saying in
10 all penalty situations -- I mean --

11 MS. BREN: That's if the legislation was to pass.

12 MS. MYERS: Right.

13 MS. BREN: So right now the minimum of \$5 is for us to
14 be able to do something right now, so we don't want to get
15 in the paper again for sending somebody a bill for a nickel.

16 MS. GEE: Where are you getting the \$5?.

17 MS. MYERS: That's our customary practice.

18 MS. BREN: It's been a cutoff for quite a while.

19 MS. MYERS: We'll put in the emergency rules that we
20 are not going to bill under \$5. You are correct if the
21 legislation passes it will probably pass before these rules
22 become final, and then we will simply withdraw them, because
23 then it will be \$75. No one ever knows what's going to
24 happen during the legislative session. Right, Dan?

25 MR. SEXTON: Right.

1 MS. MYERS: So we are just putting that in to cover us
2 for right now. Because the law goes into effect -- well,
3 the penalty actually has been in effect for six months. But
4 we are just this quarter starting to assess penalties
5 because we did a long education campaign with employers
6 letting them know that we are going to start penalizing them
7 for late, incomplete, or reports filed in the wrong format.
8 So it's just this quarter we have started assessing
9 penalties.

10 MR. SEXTON: Juanita, did we have that same transition
11 learning curve process for employees or claimants? You
12 know, I forget. I don't remember. Did we have a six-month
13 phase in on employees? We probably brought them all in and
14 talked to them all and trained them.

15 MR. FINCH: No. They just waived the overpayments.
16 We'd be willing to trade the long education timeframe and
17 waive whatever is really a particular problem.

18 MR. SEXTON: Just trickle in here.

19 MR. FINCH: Moving right along. The only situation
20 where the \$5 would apply right now -- what I'm trying to
21 find out -- where somebody's turning in a form where they
22 didn't owe anything --

23 MR. SEXTON: They've got to owe something.

24 MS. MYERS: No. They owe something, but their 10
25 percent was less than five bucks.

1 MS. BREN: We don't want to send them a bill for \$2.

2 MR. FINCH: Is there any other category where you
3 decide it's incomplete but not really -- innocent mistake.
4 What I'm just trying to figure out is there any other
5 category of employer filings where you decide not to impose
6 the penalty, but they are off on their final calculation?

7 MS. MYERS: Yes. The Department has the authority to
8 waive penalties for employers, like we can for claimants.
9 And actually it's at Diane's direction. The chief
10 administrative officer of the tax branch can waive
11 penalties. So if it looked like it was an innocent mistake
12 or it was a brand-new employer who didn't know or thought
13 they had been filing correctly, she could make the decision
14 to waive the penalty. Obviously, it's not going to be her
15 individually, but it's her staff.

16 MS. BREN: We could. With these penalties we have done
17 just an extensive education program. And then last quarter
18 we sent a report warning them their report wasn't correct,
19 so at this point I think that they would be assessed the
20 penalty.

21 MR. FINCH: Okay.

22 MS. MYERS: Right.

23 MR. FINCH: So the \$5 is only that microscopic subset.

24 MS. BREN: It would be the smaller employers. And what
25 we are trying to do is bring the balance forward back on to

1 the report.

2 MS. MYERS: The quarterly tax report.

3 MS. BREN: The quarterly tax report, so that they would
4 still see that they had that balance. We just won't be
5 sending them a bill separately.

6 MS. MYERS: And also with these rules that were just
7 adopted and went into effect we have two penalty schedules
8 for employers who don't owe us any tax. If they sent in a
9 report that was incomplete, the penalties range from \$75 to
10 \$150, and then to \$250 based on first, second, or third
11 subsequent offenses. If they don't owe tax and they file in
12 an incorrect format, their penalties are \$150 and \$250. We
13 would like to change that. We don't know what we were
14 thinking, but we would like to change that to make it
15 consistent with \$75 for the first, and \$150, and \$250 just
16 to have them be consistent.

17 MR. SEXTON: Because we're big-hearted. We are all
18 big-hearted. We think everyone deserves a small fine for
19 their first offense.

20 And the emergency rule that we're going to be working
21 on, that's going to address the \$5. And so the \$5 mark
22 isn't going to be waived, but it will accrue until it hits
23 \$75 or something?

24 MS. MYERS: No. Until it hits \$5 at this point.

25 MR. SEXTON: That's what we're going to do with the

1 emergency rule is just put in the \$5? We're not going to
2 take it any farther?

3 MS. MYERS: Right. Because the minimum due at this
4 point would be 10 percent of the tax due. It could be a
5 penny technically.

6 MR. SEXTON: Right. It could be 10 cents.

7 MS. MYERS: Yes.

8 MR. SEXTON: You know that's going to cost the
9 Department.

10 MS. MYERS: We always try to think of the front page
11 test. We don't want to be sending out --

12 MR. SEXTON: What would a reasonable person do?

13 MS. MYERS: Right. We won't bill amounts under \$5, but
14 they won't go away. They will just accrue. That will be
15 the emergency rule. They are only in effect for 120 days.
16 Then if other legislation passes, then of course we don't
17 have to adopt the emergency rule as a permanent rule, or we
18 could amend it to say nothing under 75 bucks at that point.
19 I don't know.

20 MR. SEXTON: I'm sorry. So the emergency rule that you
21 are thinking about doing that you are planning on doing, the
22 way that it's going to be written right now is \$5; is that
23 it?

24 MS. MYERS: Yes.

25 MR. SEXTON: And haven't you just said that it's not

1 cost-efficient to bill someone \$5?

2 MS. BREN: Well, on that threshold, it's be set for a
3 while, and it's not that we probably don't need to look at
4 that as well. So maybe we will try to figure out exactly
5 what our cost is in -- you know, we may just put it to \$10
6 or something, but we will look at that.

7 MS. GEE: I agree with Dan. Dan, I agree with you.
8 Because just it's been \$5 historically -- I mean,
9 everybody's costs have gone up. And if you are going to do
10 an emergency rule, do it right off the bat. And if you are
11 looking for a \$75 penalty, just break the ice.

12 MS. BREN: If we have a \$25 penalty we would want to be
13 billing for those, so I'm sure we wouldn't want to set it
14 over \$25. It may be somewhere at \$10 or \$15.

15 MR. SEXTON: And could the record show that Cliff has
16 agreed with me once today and Jan has agreed with me once
17 today, and I would like to reserve both of those and
18 probably use them at a later date.

19 MS. MYERS: So noted.

20 MR. FINCH: You realize you are giving them ammunition
21 to read at a public hearing as an example of why it's
22 fruitless to have a public hearing with both business and
23 labor in attendance.

24 MS. MYERS: After rethinking that, basically we already
25 have the authority to waive penalties if we think the

1 individual employer didn't know, et cetera. And the
2 technical assistance part of the statute actually has to do
3 with voluntarily audits, and so we probably won't be
4 adopting a rule on that. So scratch that bullet.

5 Now let's talk about predecessor-successors.

6 MS. GEE: Could I --

7 MS. MYERS: Yes.

8 MS. GEE: -- go to an issue. I forgot to state when I
9 did my introduction that I also represent the Washington
10 Staffing Industry. But I was at a meeting this week in the
11 staffing industry, and all of them operate a large part of
12 their business on annual contracts, which they are trying to
13 get signed now so they can provide personnel to these
14 employers. And they have no tax notice -- their new tax
15 notice. We have new taxes coming in, so nobody has a clue
16 what their taxes will be for next year. And we are hearing
17 that the tax notices aren't going out until somewhere
18 between the middle to the end of December.

19 MS. BREN: Probably around the 15th of December.

20 MS. GEE: That's a huge problem.

21 MR. BLACK: Yes.

22 MS. BREN: Unfortunately with the programming that we
23 had to do for the changes we just -- in fact, we just barely
24 made it to be able to run -- we just ran them, what, last
25 weekend. So we are having to review them to make sure they

1 are correct. So we don't want to mail out ones that are
2 incorrect. That's about the earliest we are going to be
3 able to do that.

4 Now, they can calculate it.

5 MS. GEE: No, they can't. Not with the new tax rate
6 tax schedule.

7 MS. BREN: Can wet get that online?

8 MR. BLACK: We do have it available.

9 MS. BREN: We do have an excel spreadsheet that they
10 can calculate if they know their benefit charges, if they
11 know what they will be.

12 MR. BLACK: Everybody should be delivered by the 13th.

13 MS. BREN: Delivered by the 13th? I thought --

14 MR. FINCH: Delivered by the 13th? I was hearing after
15 the 20th.

16 MS. BREN: They are being printed into this weekend and
17 next weekend.

18 MR. BLACK: I don't think they're going to go into two
19 weekends on that.

20 MS. BREN: I think that's the last thing I heard was
21 they were going to be printed the next two weekends.

22 MS. GEE: Who do I talk to? Do I talk to you or to you
23 about it to get them the information they need to do their
24 contracts?

25 MS. MYERS: If you have something that we can put on

1 our web site now that employers can use to estimate their
2 tax, I would say talk to Bob, excuse me, not Bob. Well,
3 yeah, Bob and --

4 MR. BLACK: Dennis. And they can put it on fairly
5 quickly. Because we have got one on there now people can
6 calculate their weekly benefit amount.

7 MS. GEE: That would -- that would be -- because this
8 is a major problem that we're dealing with right now.

9 MS. BREN: We will see if we can run it through a quick
10 clearance.

11 MR. BLACK: We are only going to be able to do it for
12 those who are experienced. We can give what their rate
13 would be if they're not experienced, but we will not be able
14 to put that out as part of the automated process.

15 MS. GEE: But you are covering 90 percent of the
16 problem.

17 MS. BREN: Most of them would be experienced.

18 MS. GEE: I'm sorry for sidetracking you, but its' a
19 huge issue.

20 MS. BREN: We will let you know if we can get it on.

21 MS. MYERS: As soon as we get it on we will let you
22 know. And if you can notify the members of the staffing
23 industry.

24 MS. GEE: Thank you.

25 MS. MYERS: Predecessor-successor employers. Last year

1 when we first started discussing rules we indicated that we
2 needed to define substantial continuity of ownership and
3 management, but at the time we tabled it because we
4 understood that federal legislation was going to be passed,
5 and in fact it has passed, legislation on SUDA dumping. You
6 all know what that is, correct?

7 The language in the federal bill is slightly different
8 in some areas than our state legislation. So we have
9 submitted a second legislative request to change some of the
10 terms in our predecessor-successor statute to be the same as
11 the federal law.

12 But in the interim we are looking at adopting emergency
13 rules in the event to do what we can to comply with federal
14 law by rule in the event that the legislation doesn't pass
15 or doesn't pass until late in the session, or whatever, to
16 cover us for a certain period of time.

17 For example, "substantial continuity of ownership,
18 management, or control" is what the federal language uses.
19 They have added "or control." So we are looking at a
20 definition on that.

21 MS. GEE: Now, is that an "or" or an "and"?

22 MS. BREN: It should be an "or."

23 MS. MYERS: She corrected me. It should be an "or."

24 So we are looking at defining "continuity of ownership,
25 management, or control."

1 The feds are not at this point expressing any
2 willingness to define it.

3 MR. FINCH: But didn't they just come out with a
4 guideline, though?

5 MS. BREN: Right. But it does not define what these
6 are and basically --

7 MR. SEXTON: They don't define each term. They don't
8 define what "control" means?

9 MS. MYERS: What they essentially say is if there's
10 substantial continuity of ownership, management, or control,
11 these are the guidelines of how you treat it. But it
12 doesn't say what substantial continuity of ownership,
13 management, or control is.

14 So we are going to try to look at some of the other
15 states to see what they're doing, if they have done anything
16 yet. But we're working on a definition in-house to try to
17 come up with what that -- specifically what that means so
18 that it's clear to the employer community as to what we
19 mean. Because the penalties for trying to avoid the
20 successorship are very high.

21 MR. SEXTON: And we don't want to penalize anyone.

22 MS. MYERS: Just a second. Jan was first.

23 MS. GEE: I had suggested previously that the
24 Employment Security go look at the work comp laws because
25 there's been so much work on that in successor employers.

1 Did you do that?

2 MS. MYERS: Yes, we did.

3 MS. GEE: Was there anything there?

4 MS. MYERS: The information wasn't really helpful.
5 They didn't use the same type of terminology that we are
6 using. It really didn't fit with our needs.

7 MS. GEE: I just think that we need to make sure we are
8 looking at L&I and ESD to get coordinated on that
9 definition, because it's become such a big issue in both
10 arenas. And we should probably have consistent definitions
11 so that an employer knows.

12 MS. MYERS: Right.

13 MS. GEE: So maybe we need to take a look at that.

14 MR. SEXTON: Exactly on the same page. My thoughts
15 exactly. I will take it farther with the Department of
16 Revenue. It makes no sense. And any other agency out there
17 that we're unaware of or we are forgetting that uses these
18 terms, why should they have different definitions? And why
19 should you all be jumping through different hoops in
20 different agencies? It makes absolutely no sense.

21 And somehow if we have got to do it legislatively, we
22 have got to find out how to get the agencies to all speak
23 the same language.

24 MS. GEE: I have been saying L & I, but I think it's
25 the Department of Revenue that have beefed up their

1 definitions the last couple of legislative sessions.

2 MS. MYERS: Diane came to us from the Department of
3 Revenue, and she said they have defined "successorship," but
4 they have not defined "substantial continuity of ownership,
5 management, or control."

6 MS. BREN: And we will look at that. In fact, I
7 drafted the revised rule before I left there, so we will
8 obviously be looking at if there are things that should be
9 the same or not be the same. What we don't want to do is --
10 you know, if they're totally different reasons or whatever,
11 we don't want to end up limiting ourselves. We will look at
12 what other states are doing as well.

13 MR. FINCH: The key point being made is you will end up
14 as a poster child if it turns out that we end up in a
15 situation where if a business is transferred L & I taxes go
16 one way, UI goes another, and revenue is somewhere. It
17 cannot be allowed to happen.

18 And frankly, because you're being driven by a federal
19 requirement now, it's probably time for a summit meeting and
20 everybody to sit down. Because there's -- it will be pure
21 lunacy. Even the little step of you all coming out in a
22 different position than L & I -- and I'm not necessarily
23 advocating for the L & I position -- it will be pure lunacy
24 if we end up in our state where because of state law when a
25 transfer takes place UI goes one way, worker comp goes the

1 other way, you will be a poster child.

2 MR. SEXTON: Not that hasn't happened in the past.

3 MS. BREN: I'm not sure if we'll ever been the same as
4 revenue because of the third bullet we have here of the
5 federal legislation requires that employers are considered
6 to be operating as company assets.

7 MS. MYERS: Employees.

8 MS. BREN: And I don't believe revenue considers the
9 employees to be operating assets.

10 MR. FINCH: Right.

11 MS. BREN: So if you are looking at assets, you are
12 probably never going to be consistent with them. But we
13 will look at what L & I is doing as well.

14 MR. SEXTON: There's probably undoubtedly -- that's an
15 excellent point. Undoubtedly, there's reasons why this
16 hasn't gotten done before. There's reasons why it's stalled
17 or it hasn't gotten this far before. But for the simple
18 definitions of the simple terms and the ones that we're
19 looking to define right now, if we could look at what
20 L & I's got and what revenue's got and where, you know, the
21 agencies use the same terms where we can get together, gosh.

22 MS. MYERS: And we're not disagreeing with you at all.

23 MS. BREN: In fact, Dan, I'm on one of those priorities
24 of government committees where we are trying to bring some
25 of our definitions into line.

1 MR. SEXTON: And I meant that as a compliment.

2 MS. MYERS: Susan, what was the point when we contacted
3 L & I? Was it that they did not have a final definition
4 yet? They did not have one. They agreed they didn't have
5 it yet of this. They didn't have a definition of
6 "substantial continuity of ownership." They knew what a
7 predecessor was; they knew what a successor was. But they
8 didn't define this particular term.

9 MR. FINCH: Right. The only other thing I'm urging is
10 we may well be at a situation where we need to go back and
11 revisit L & I.

12 I guess what I'm getting at is particularly now that
13 we're moving into a broader context we don't want to be
14 bound by the Labor and Industries definitions either. What
15 we do want to come out with is a definition that works out
16 for everybody and that includes continuity between all
17 agencies and, frankly, federal too.

18 But where we don't want to end up is with Employment
19 Security Department in the meantime now adopting a third
20 definition. It will be a poster child.

21 MR. SEXTON: Cliff, I think that's what I just said.

22 MS. GEE: You did.

23 MS. MYERS: I'm going to skip to the third bullet just
24 because Diane already brought it up. Right now we have it
25 in our rule that employees are not considered company

1 assets. We just need to strike that, because under the new
2 federal law employees are considered as company assets, so
3 they are considered when we look at transferring ownership,
4 management, or control.

5 Okay. Back up to the second bullet. The assignment
6 date of penalty for avoiding successorship. We can only
7 change the tax rate once a year the way we are currently
8 configured and will be configured. So the question we have
9 is, when we discover that an employer has knowingly
10 attempted to avoid -- attempted or succeeded in avoiding the
11 successorship provisions in order to obtain a lower tax
12 rate, does the penalty which is an increase in their tax
13 rate begin with the date of discovery? with the date that
14 the penalty occurred? or is it like for the following
15 calendar year? And of course the problem with the
16 subsequent calendar year is the company may go out of
17 business and then there's no penalty. So do we go back to
18 the state? We can go back -- what is it?

19 MS. BREN: Three years.

20 MS. MYERS: Three-year statute of limitations. Do we
21 go back three years and assess, or do we start it at the
22 point we discover it and say, "Okay, for this year your
23 taxes are higher, as opposed to last year or two years ago.
24 Your taxes are higher and we will bill you a back amount."

25 MS. GEE: My opinion is that we have such a problem in

1 this arena that you hit them with everything you can.

2 MS. MYERS: Okay.

3 MS. GEE: And so I would say that you go back as far as
4 your discovery allows you to go back and assess penalties.

5 MR. SEXTON: We are getting along so well today.

6 MS. GEE: But the employer community is the one that
7 for years we asked ESD to do something about the SUDA
8 dumping. And we put this in here, and we intended to hit it
9 hard.

10 MR. SEXTON: So go back to point of discovery or three
11 years, as far back as you can.

12 MS. GEE: I think their discovery only allows them to
13 go back to three years.

14 MR. SEXTON: Yeah. The statute of limitations. It's
15 moot to go back any farther.

16 MR. FINCH: I guess part of my question is you have got
17 a pretty specific section with regard to successorship and
18 the penalty and the taxes.

19 MR. SEXTON: Where are you at?

20 MR. FINCH: Page 33. So I'm trying to figure out --

21 MS. MYERS: That's changed since last -- we don't have
22 the new statute. It got changed last year.

23 MS. BREN: It's the maximum rate plus 2 percent.

24 MS. MYERS: It's not in our current law book because it
25 was presented before the law change was made. It doesn't

1 say that. It says they will be assigned it for the past
2 quarters for the calendar year, but it doesn't say which,
3 the date the violation occurred, the date we covered it, or
4 the next.

5 MR. SEXTON: This will be part of the emergency rule
6 too?

7 MS. MYERS: Yes. Because we may find somebody
8 beginning January. Even if our legislative request passed,
9 it's not going to -- well, it really doesn't have anything
10 to do with this particular part, does it? I don't think our
11 legislation has anything to do with the penalty.

12 MS. BREN: No.

13 MS. MYERS: The only thing it does -- but if our
14 bill -- if it did end up having some impact on this, even if
15 the bill was introduced the first day of the session, the
16 reality is it may not be effective until June or July.

17 MR. SEXTON: Right.

18 MS. MYERS: And we need to figure --

19 MR. SEXTON: You still need to figure out what to do
20 between now and then.

21 MR. FINCH: I guess the thing you have to guide your
22 consideration whether or not this is in the statute --
23 because I don't believe it would be something that would be
24 that controversial if there had to be a legislative change
25 -- to the degree that something is done knowingly, from our

1 perspective, the bigger the penalty the better. The harder
2 you hit them the better, if we need to change the statute,
3 or whatever.

4 The area where it gets difficult and gets into a
5 balancing act goes to perennial problems with successorship.
6 And that is to the degree you write a very broad definition
7 of successorship. In order to be able to get all of the
8 cases of it, you move into the gray area where you catch a
9 lot of innocent people.

10 So part of the answer from a pure policy perspective is
11 whether one goes with a very, very broad definition or a
12 narrower definition. To the degree that it's narrower and
13 more in the black and the white area, and certainly to the
14 degree that it's in the knowing area you want to throw the
15 book at them. To the degree that you're forced to write a
16 definition that is very, very broad to get at some of those
17 complex legal tax attorney maneuvers that they do. But it's
18 also going to throw a net wide enough that it's going to
19 catch a lot of innocent people. Then you have got to build
20 into your penalty system a little bit of flexibility. It's
21 a proverbial challenge, but it's particularly difficult.

22 MR. SEXTON: So if the definition is narrow who would
23 you like the book thrown at?

24 MR. FINCH: To the knowing category. There's quite a
25 bit of them.

1 MS. MYERS: Let's move on to employer PEOs. We already
2 have the state law 50.20.245 -- is that -- I don't remember
3 offhand -- that talks about temporary agencies, employee
4 leasing companies --

5 MS. BREN: And referrals, staffing referrals.

6 MS. MYERS: Yes. Referral services. We are seeing
7 more and more professional employer organizations. And
8 those are entities that basically take over the HR, human
9 resource, work for their client companies. And they do
10 their personnel work, their administrative work, payroll,
11 file their taxes for them, et cetera.

12 But technically they are different from temporary
13 staffing agencies because although their contracts usually
14 say that they can make hiring or firing decisions, it
15 doesn't happen often. A temporary service agency is the
16 employer of the temporary worker, and they refer that worker
17 out on different jobs.

18 And as an example I used Tuesday, if I'm an employee of
19 Kelly Services, and I'm referred out on a job and I do
20 horrible work and they fire me, I am still employed by Kelly
21 Services. I go back to Kelly Services and say, "The client
22 company discharged me, and I need another assignment." Now,
23 Kelly Services could discharge me, but until they do I am
24 still employed.

25 With the PEOs, the client company is the one that

1 discharges that person. That person works for that client
2 company, and in most cases these individuals don't even know
3 that there's a PEO out there that's handling the
4 administrative work for their company. They think they work
5 for Jim's Diner, and they have no knowledge that Jim's Diner
6 has an arrangement with a PEO to cover their administrative
7 payroll.

8 MR. SEXTON: Who does the hiring and firing?

9 MS. MYERS: The client company.

10 We need to come up with a definition of those
11 organizations to distinguish them from the temporary service
12 agencies. They're somewhat similar to employee leasing
13 firms in a way. But to clarify that the client companies
14 are for benefits purposes and taxes and experience rating
15 purposes are the employers. So what the plan to do is set
16 up an account under the PEO's names but subaccounts under
17 each of the client companies and have their experience
18 rating assigned to those individual companies at the
19 individual subaccounts, if I explained that correctly.

20 MS. BREN: Yes.

21 MS. MYERS: Dan.

22 MR. SEXTON: Very interesting. I'm wondering here.
23 The PEO doesn't have any liability? any charges? Or do they
24 have the charges? the liability? the responsibility of its
25 clients?

1 MS. MYERS: No. They would have --

2 MR. SEXTON: The experience of their clients.

3 MS. MYERS: No. They would have the experience of
4 their own. There's usually employees of the PEO that do the
5 work. So they would have the experience rating based on
6 their employees and the tax rate based on their employees.

7 MR. SEXTON: So I'm Sexton Services, and I have three
8 employees, and, you know, we have 200 clients. But this is
9 all the employees I have.

10 MS. MYERS: Yes.

11 MS. GEE: If you are a leasing firm, if you are a PEO.
12 If you are in the temporary staffing industry, you carry the
13 experience rating and the liability. So it's very
14 different.

15 MR. SEXTON: Right.

16 MS. MYERS: Yes. And the other difference is the
17 temporary agencies don't do the HR work in most cases, the
18 administrative and payroll work for all the clients'
19 companies. They do for their workers that work out there,
20 but they don't do it for the company's regular full-time
21 employees. And this happens a lot I think with smaller
22 companies.

23 MS. GEE: It happened a lot in doctor and dentist
24 offices, like that, where the business owner is a
25 professional and their staff is too small to put together a

1 quality benefit package, so they pool their benefits under
2 the PEO. So that's where they most commonly use the PEO
3 versus doing the supplemental staffing provision in
4 professional offices.

5 MR. FINCH: Is your intent, though, to continue to try
6 to follow all of these new levels of organizations or to
7 come up with just some general rules? I guess I don't
8 understand how -- it is now one continuous spectrum. There
9 isn't one type of model that you can't suggest -- I mean,
10 from leasing companies to temps to PEOs to everything in
11 between now is all out there.

12 MS. GEE: Except that the PEOs tend to be a very
13 distinct segment of the staffing industry, and very few of
14 the staffing firms do both. PEOs are very, very distinct,
15 and there aren't very many of them really. And they do want
16 to be treated differently. The staffing firms want to be
17 treated differently.

18 MS. MYERS: Let me interject. And also because the
19 statute right now where it talks about service agents, temp
20 agencies, employee leasing companies, and service referral
21 agencies are the employer, and they are liable for taxes.

22 MS. GEE: Exactly.

23 MS. MYERS: The distinction with PEOs is while they
24 call themselves coemployer, they basically do the
25 administrative and HR work. The clients don't work for

1 them. The employees don't work for them. And in fact in
2 most cases those staff in that doctor's or dentist's office
3 don't know -- they know they work for this physician. They
4 may not even know that there's a professional employer
5 association out there that's gotten together to pool things
6 for benefits or HR purposes.

7 MS. GEE: And we have definitions. The American
8 Staffing Association has a model of contracts and stuff, and
9 they have all the definitions. In fact, the Department of
10 Revenue just asked us six weeks or so ago to get that
11 together, which we did.

12 MS. MYERS: Can you send it to me? I don't know if I
13 have my card. You know my e-mail address, Jan, don't you?

14 MS. BREN: And we're coordinating with the Department
15 of Revenue and L & I on this like you have asked us to do.
16 And L & I does require them to have separate subaccounts as
17 well.

18 MS. GEE: We last year created a whole different type
19 of subaccount with ways to put them into ratings for the
20 staffing industry. Yeah, we did.

21 MR. SEXTON: So the only problem here is just that PEO
22 -- well, I guess it's not just that it's not currently
23 defined, but it sounds like it's not currently in statute
24 either.

25 MS. MYERS: It's not.

1 MS. BREN: Not specifically addressed.

2 MS. MYERS: It's not in statute, correct. But they are
3 out there.

4 MR. SEXTON: Sounds like Jan's got it handled.

5 MS. GEE: I do.

6 MS. MYERS: Okay. Let's move on.

7 Transition from SIC to NAICS, Standard Industrial
8 Classification to the North American Industrial
9 Classification System. And we're thinking about -- and we
10 haven't decided 100 percent whether we are going to do a
11 rule on this -- to clarify how the transition was completed.
12 For tax rate purposes there's not a straight crosswalk
13 between the two types of classification systems. And when
14 we are getting into the 6.0 and 6.5 tax rates, those are
15 industries that are capped at 6.0. When we transition to
16 NAICS, a lot more companies are being capped at the 6.0.
17 Well, a couple thousand more.

18 MS. BREN: 2000, it's about.

19 MR. BLACK: I think it's 4,700.

20 MS. GEE: 4,700?

21 MR. BLACK: I think we are at a little under 17,000 and
22 otherwise I think it would be around, oh, thirteen-something
23 or something like that. I would have to look at the
24 numbers, but I think it was right around in there.

25 MS. GEE: Do you have a breakdown by industry for us?

1 MR. BLACK: I have it broken by NAICS code.

2 MS. MYERS: Well, the NAICS code pretty much tells you

3 what the industry is.

4 MR. BLACK: Using their definitions we have it broken

5 down.

6 MS. GEE: By code under what it was under the SIC and

7 what it is under the NAICS now?

8 MR. BLACK: Well, I'm not sure what you are saying.

9 MS. GEE: Well, the 4,700 --

10 MR. BLACK: Where they fall? I think the biggest area

11 where they fall is the nonstore retailers. That's the

12 Internet companies that get pulled in.

13 MS. BREN: Where there's --

14 MR. SEXTON: It's not that they're being increased,

15 it's just that they're being differently distributed.

16 MS. BREN: -- some wholesalers were pulled in as well.

17 Because --

18 MS. GEE: Like seasonal vegetable and fruit

19 wholesalers, that kind of stuff?

20 MS. BREN: My understanding was the SIC is more on the

21 activity and the NAICS is more on the product. Is that

22 correct?

23 MR. BLACK: Right.

24 MS. MYERS: So when you have the product being some

25 type of agricultural product, it brings in more companies

1 than were brought in under the SIC code that were capped.
2 So we're capping at 6.0 about 4,700 more companies than we
3 would have if we had not gone to NAICS, which we had to do.

4 MS. GEE: So if I go back in my memory and look at all
5 those, it's probably vegetables, fruit, produce-type
6 distribution and specialty retail stores into the kind of
7 landscape area, nursery-type areas because I remember their
8 experience rating was very high. So that would be the
9 nonstore retailing that you are talking about? Those areas?

10 MR. BLACK: What had happened, it appears anyway, was
11 there was somewhere around 38 businesses that went from
12 being like a fruit wholesaler.

13 MS. GEE: Right.

14 MR. BLACK: And when they got reclassified into NAICS
15 they became a nonstore or retailer or a wholesaler,
16 whichever the case may have been. And when they went in
17 there, it included a lot of things from other nonlocation,
18 or whatever you would call it, stores. They sort of all
19 came in together, so there was like close to 3,000, I think,
20 that came in.

21 MS. GEE: Probably like farmers' markets.

22 MR. FINCH: So it's over a 25 percent increase in the
23 number of caps from a numerical perspective. Do we have any
24 idea from a tax base perspective how big it is?

25 MS. BREN: Not all of them were --

1 MR. BLACK: Not all of those will be restricted. Of
2 that 3,000, I believe there were somewhere around 180 or 200
3 that would have been restricted to 6.0 percent.

4 MS. MYERS: At this point.

5 MR. BLACK: Based on last year's -- applying it to last
6 year's benefit ratios.

7 MR. FINCH: I see what you are saying.

8 MR. BLACK: Because we did not have this year's
9 available to us.

10 MR. FINCH: So the number that's actually being capped
11 is --

12 MR. BLACK: 180 to 200. It's a relatively small number
13 that get capped. The others are potentially capped just not
14 necessarily capped.

15 MS. MYERS: They just are not there yet. The cap for
16 them would be 6 percent, but the vast majority aren't close
17 to that.

18 MR. FINCH: Okay.

19 MS. MYERS: So we're actually capping a couple hundred.

20 MS. GEE: But we don't know the dollar value of that.

21 MR. BLACK: No. We aren't looking at the dollar value.
22 We are looking at the numbers.

23 MS. BREN: Not at this point, Jan.

24 MS. GEE: Can you do that for us?

25 MR. BLACK: I think as quickly as I got that

1 information together for us I would think that would be
2 possible.

3 MS. GEE: Is this just a piece of information for us
4 because we can't change the NAICS.

5 MS. MYERS: No, we can't. The only reason we are
6 considering possibly doing a rule on this is the Office of
7 Administrative Hearings is getting real picky with us. And
8 lot of times they are telling us, "If you don't have defined
9 how you did this, we are tossing out your case." And we are
10 losing a lot of charging appeals because they say we don't
11 have a lot of terms defined.

12 We are thinking about doing a rule just to clarify how
13 the transition was made and that more companies were capped.
14 Now, it may not be necessary for this because if the
15 employers are capped, the capped employers aren't going to
16 complain, so they wouldn't be appealing, but it's possible.

17 So at this point we haven't made a final decision
18 whether we need a rule on this. We are just trying to get
19 some dialogue going in the event we do need a rule just to
20 satisfy OAH.

21 Which brings us to the section on definition of terms
22 related to tax rates. We have been losing some of our tax
23 appeals because they say we have a number of terms that we
24 have not defined. And I will let Keith --

25 MR. BLACK: Well, I think the key one is experience.

1 You know the code continues to refer to experience, but
2 experience is not defined in any way.

3 MR. SEXTON: Amazing.

4 MR. BLACK: And the federal government in their
5 definition said something like it can be reasonably defined
6 as being all the benefit charges that are related to wages
7 for the wages that were paid. In other words, since all the
8 benefit charges come historically after the payment of the
9 wages, they would be tied together as part of it. They
10 would be the experience on those wages that were paid.

11 MS. GEE: I was writing notes. I guess I missed this.
12 What's this about?

13 MS. MYERS: For example, we use the term "experience
14 rating" and so on, but we don't define "experience." And
15 he's saying the federal government has a definition that we
16 may be able to use.

17 There's a lot of terminology also that comes up with
18 the new law. And I didn't bring the list. Did you? You
19 know, graduated social cost factors.

20 MS. BREN: The combined array factor rate, and just
21 some of things that we're using that we don't have
22 definitions for. And we just feel that we should get those
23 defined.

24 MS. MYERS: The law will tell us what they are, but
25 they are very particular. For example, they are the ones

1 why on our benefit rules this last year we defined
2 "effective date of claim." We all knew what that was. It's
3 a term of art. OAH says you better define it or we will
4 decide, because they have never used it. So we defined
5 "effective date of claim."

6 MR. BLACK: One of the things that's fairly major is
7 just the definition of what level you treat NAICS code for
8 industry average and then how you go about calculating
9 industry average, because it just says as the commissioner
10 may determine.

11 MS. MYERS: And we're thinking of doing it out to two
12 decimal points.

13 MR. BLACK: There's some definitions that way also
14 where they speak of decimal points. And if you round it the
15 way -- if it's rounded to the point in whole percentages, it
16 wouldn't be -- because they are talking about a prior and
17 converting it to a percentage.

18 So the intention looks fairly clear, but it's just if
19 you are reading it word-for-word, which is what
20 administrative law judges will do a lot of times. And they
21 will say, "This is what it says." And the only people that
22 are going to be questioning it are the ones where it's to
23 their benefit going a different way.

24 MS. MYERS: That's what we are going to do. We are not
25 going to create new definitions, create new terminology and

1 throw it in there. It's just to try to define what --

2 MS. BREN: What we're doing.

3 MS. MYERS: -- clearly what the terms are that we're
4 using. So there should not be any surprises when we come
5 out with the draft definition.

6 MR. FINCH: OAH I think is becoming a bigger problem.

7 MS. MYERS: So. Do we have any additional questions?
8 comments on any of these subjects that I have gone through?
9 And then I will talk a little bit about what we are a going
10 to do next.

11 MR. FINCH: The only question is timing now.

12 MS. GEE: Just to review, I'm going to get you a
13 definition from the staffing industry for PEOs. You are
14 going to get for us an analysis of the conversion of the SIC
15 to NAICS and where those are coming from and an estimated
16 dollar value. You are also going to get to us case law
17 history that you are using to analyze the statute for
18 development of the rule in the part-time area.

19 MS. MYERS: And you're writing a letter. Your legal
20 counsel is drafting a letter for AWB.

21 MS. GEE: We're going to have an AWB meeting based on
22 your timeline, but we will talk about that after. And we
23 are going to submit a letter to you from the business
24 community on these issues.

25 MS. MYERS: Okay.

1 MS. BREN: And we will see if we can get the tax
2 computation spreadsheet that we have online as soon as
3 possible and let you know that as well.

4 MS. GEE: Will you please call me as soon as you talk
5 about this internally and give me a heads up if it might be
6 two days or -- hopefully it's just a couple days that you
7 have it.

8 MR. BLACK: Part of the problem is the way the Internet
9 works some things aren't immediately available when you use
10 a change of address and stuff like that because of different
11 search engines and all that. There was a discussion about
12 that yesterday, and I was totally lost in how that's
13 working.

14 MS. MYERS: We will certainly take a look at it.

15 MS. GEE: Or a name and phone number that I can have
16 300 staffing agents call.

17 MS. BREN: Well, I was going to give you my card, Jan,
18 but now --

19 MR. SEXTON: That rules that out.

20 MR. FINCH: Do we have any idea yet how many employers
21 are going to fall under the 12 rate class jump role and
22 therefore be eligible for buy back?

23 MS. BREN: I believe it was about 22,000.

24 MR. BLACK: That was just my rough estimate without
25 having any scientific figures with it.

1 MS. BREN: We figured it went roughly from about 5,000
2 to 22,000.

3 MS. GEE: From 5,000 to --

4 MS. BREN: From last year to about 22,000 that would be
5 eligible.

6 MR. FINCH: And have you got that up on your web site
7 now?

8 MS. BREN: On the voluntary buy down? Do we have that
9 up there yet?

10 MR. BLACK: No.

11 MS. BREN: We will work on getting that up in there
12 too.

13 MR. FINCH: We desperately need that up in the next
14 week. We are going to send out our own notifications.

15 MR. BLACK: To clarify that, the voluntary contribution
16 won't be coming out with the tax rate notices. They come
17 out later in the month in the first part of January, and
18 they are due February 15. So we won't have any individual
19 information available on the Net. The calculation is
20 relative complex, and I don't know if it would lend itself
21 to a web site application, unlike the calculation of a
22 simple tax rate, which is relatively simple. It's just got
23 a single look up.

24 MS. GEE: I wondered, though, if you couldn't do an
25 example on the web with -- where it would explain the

1 statute there. If you could do a step-by-step example that
2 they could then take their own company and walk through that
3 step.

4 MR. FINCH: And the key is that, plus what you just
5 told us right there is more information than they have right
6 now. They are going to get these notices in another week to
7 two weeks, and immediately then this whole freight train is
8 going to begin.

9 And the number one complaint that I have gotten in
10 previous years is all of a sudden buried in fine print on a
11 form separate from the one they actually get the rate notice
12 is the notification of the buy down right. And then from
13 there it's virtually impossible to find any information.

14 MR. BLACK: Well, what we're looking at, not for this
15 year because, you know, there's not the time to do it, is in
16 the future we are looking at the possibility of making a
17 note on the tax rate notice that they will be eligible.

18 MR. FINCH: That's a different thing.

19 MS. BREN: But we do have some things that Keith has
20 drafted up, because I just did a presentation in Seattle on
21 Tuesday that he prepared some stuff for me that we can look
22 at getting out to you as soon as possible on our web site.

23 MS. MYERS: For example, with the benefit eligibility,
24 we don't go into the finite detail that comes into
25 eligibility decisions, but you can certainly put out generic

1 information.

2 MR. FINCH: Right.

3 MS. BREN: And we do have that. We should be able to
4 get that out soon.

5 MR. FINCH: The other thing I'm concerned about here is
6 all the business associations have already started notifying
7 their members that, bang, on this date you are going to be
8 getting your tax notification. Then you have until
9 February-whatever to get your buy back in and the whole bit.
10 If there's going to be any delay in the sequence with regard
11 to -- there are going to be a number of employers on day one
12 when they get their notice who are going to then want to
13 begin whatever process they are going to do to figure out
14 whether they want to get a buy back and fill out the form
15 and move it.

16 So there's going to be a two-week delay? Is that what
17 I'm hearing?

18 MR. BLACK: It's normally longer than that. The only
19 reason why there's just such a short delay this time is
20 because of programming for penalties, and that sort of
21 thing. It delayed some of the implementation of the changes
22 in 6097, so we are running two weeks behind where we would
23 normally be in tax rate assignment.

24 So that way there's a shorter period difference between
25 when they get the tax rate notice and when they get their

1 voluntary contribution than there would normally be.

2 MR. FINCH: You are absolutely right. You could never
3 on the web site go into all the nuances of eligibility. But
4 what you can do is lay out the process, lay out when this is
5 going to be available and the rest. And the point being,
6 every notice you do, public relations notice and the rest,
7 should have a hyperlink going to whatever page you have on
8 the web site that's describing buy back. Because this time
9 unlike previous years, the articles have already gone out to
10 the restaurant association. AWB is going to have a huge
11 article in their magazine that goes out to the whole world.

12 MR. SEXTON: I don't get that.

13 MS. GEE: It's a totally new tax system.

14 MR. SEXTON: No I don't get that magazine.

15 MR. FINCH: You can buy it over at Fred Meyer over at
16 the magazine stand.

17 We should not have any breakdown. It's got to be a
18 seamless flow for employers who want to interact and find
19 out what's going on and find out how to get the form and the
20 whole bit.

21 MR. BLACK: The form will be automatically mailed to
22 anybody who's eligible. So it's not people who are not
23 eligible, you know -- they can get a form and try to become
24 eligible. Normally we would send it out to like 5,000, and
25 we would give them the form, the application, everything.

1 MR. FINCH: But two years ago you didn't do that.

2 MR. BLACK: We have done it every year since it's been
3 in place.

4 MS. BREN: For the people who are eligible.

5 MR. FINCH: You sent out the form?

6 MR. BLACK: Yep. The form and instruction letter that
7 goes with it.

8 MS. BREN: If somehow someone got missed --

9 MR. FINCH: Because I sat on the Department one time
10 when they tried to explain to a major corporation in this
11 state over the fact that, no, they didn't get any of that.
12 But buried in the fine print somewhere it was noted.

13 MR. BLACK: Sounds like somebody that was uninformed.

14 MS. BREN: We will work on getting you that as soon as
15 possible.

16 MS. GEE: Of the 5,000 last year, how many people took
17 advantage of the buy down?

18 MR. BLACK: Oh, you would be shocked.

19 MS. GEE: Like 14 or something?

20 MR. BLACK: I think it was 13. Before we have had -- I
21 won't say a lot of people -- we normally had in the
22 neighborhood of 150. What would happen is a lot of people
23 felt it was a mandatory thing, so they would select the
24 lowest box and send that money in. And we felt every time
25 that they were selecting the lowest option and sending it in

1 that they probably didn't understand the program.

2 We took great pains this last time to really say that
3 it wasn't a mandatory program. And the only people that
4 bought down this time were the 13, and they bought down 100
5 percent of their benefits each one of them did.

6 MS. GEE: Because it's not a good deal.

7 MR. FINCH: It is a good deal for a number of
8 employers, but only if you look at the impact over the next
9 four years.

10 MS. BREN: If you are increasing your employees and
11 various things, then it would be.

12 MS. MYERS: Let's talk a little bit about time frames.
13 We are already into December. And we would like to have
14 emergency rules in place early January, at least those
15 surrounding some of the predecessor-successor stuff that
16 takes effect in January and part-time workers, of course.
17 So if you want to submit comment on the topics that we have
18 discussed today, particularly the input from the AWB's legal
19 counsel --

20 MS. GEE: Well, it will actually be from our UI
21 committee. It's going to help us, yeah.

22 MS. MYERS: From UI. When are you meeting?

23 MS. GEE: Well, that's the question. We were going to
24 meet on the 15th, and we just found out that our keynote
25 speaker can't meet until the 21st, so we were debating about

1 that. So we may have to have this as a separate piece.

2 MS. MYERS: Right. So if you could have it to me by
3 the 17th. Is that possible?

4 MS. GEE: Yeah. That will give us -- yes.

5 MS. MYERS: And of course if BIAW has anything, a
6 letter to submit or anything, or anybody, Dan, has any
7 comments to submit in writing if you could give them to me
8 by the 17th.

9 MR. SEXTON: So the final day for comments will be the
10 17th?

11 MS. MYERS: For emergency rules. We will certainly --
12 certainly the emergency rules are not final rules. And then
13 we would reconvene to discuss after the start of the year to
14 say which part of these emergency rules we should consider
15 adopting as permanent rules. And a large part of that will
16 depend on what, if anything, happens in the legislature this
17 year, which may depend largely on who our governor is.

18 MR. SEXTON: How so? What? What did I miss? What?

19 MS. MYERS: So with that said, we will do these other
20 pieces as quickly as we can, but the deadline for comments
21 to be considered before the emergency rules are finalized --
22 I would like to have them by the 17th. Okay?

23 MR. FINCH: Did you just confirm the 17th was for the
24 part-time or for all of them?

25 MS. MYERS: As many as possible, but particularly the

1 part-time and the predecessor-successor because those go
2 into effect in January and are likely to have the most
3 controversy.

4 MS. GEE: The other parts are the easy parts.

5 MS. MYERS: Yes. The other parts are the easy ones.
6 Okay.

7 MS. GEE: Thank you.

8 MS. MYERS: Thank you very much. And this meeting is
9 adjourned.

10 (Whereupon, at 11:45 a.m.,
11 proceedings adjourned.)

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C E R T I F I C A T E

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) ss.
County of Kitsap)

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